



FAMILY LAW

Cases and Materials

Volume II

**Carol Rogerson and Martha Shaffer
Faculty of Law
University of Toronto**

1998-1999

Prepared with the assistance of Ranald Sinclair, Ella Schwartz, Faith Teo,
Wendy Adams and Paul Broad

* * *

*These materials are distributed solely for classroom use
by students in the Faculty of Law, University of Toronto*

BORA LACKIN LAW LIBRARY

AUG 17 1998

FACULTY OF LAW
UNIVERSITY OF TORONTO

FAMILY LAW

Cases and Materials

Volume II


Carol Rogerson and Martha Shaffer
Faculty of Law
University of Toronto

1998-1999

Prepared with the assistance of Ranald Sinclair, Ella Schwartz, Faith Teo,
Wendy Adams and Paul Broad

* * *

*These materials are distributed solely for classroom use
by students in the Faculty of Law, University of Toronto*



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

FAMILY LAW

Table of Contents

Volume II

	Page No.
V. MATRIMONIAL PROPERTY	
A. Historical Overview	
(a) Common Law	
OLRC, <i>Report on Family Law, Part IV: Family Property</i>	278
(b) Trust Doctrine	
LRCC, <i>Family Property</i>	281
Note: <i>Murdoch v. Murdoch</i> and <i>Rathwell v. Rathwell</i>	282
<i>Pettkus v. Becker</i>	285
<i>Globe and Mail</i> , “Woman’s Suicide Ends Fight for Rights”	293
Note: <i>Sorochan v. Sorochan</i>	294
<i>Peter v. Beblow</i>	296
Note: Recent Cases on Constructive Trust	312
<i>Harrison v. Kalinocha</i>	314
<i>Crick v. Ludwig</i>	316
<i>Nowell v. Town Estate</i>	321
Note: Legislative Reform of the Property Rights of Unmarried Cohabitants	328
(c) Statutory Reform	
Holland, “Reform of Matrimonial Property Law in Ontario”	329
Wolfson, <i>The New Family Law Act</i>	331
B. The Family Law Act, 1986	
(a) The Partnership Principle	
Knetsch, “Some Economic Implications of Matrimonial Property Rules”	334
Prager, “Shifting Perspectives on Marital Property Law”	341
Eekelaar, <i>Family Law and Social Policy</i> , “Adjustment on Divorce”	346

Fineman, “Implementing Equality”	349
Mossman, “Book Review of Weitzman’s <i>Divorce Revolution</i> ”	353
Note: Application of Matrimonial Property Law to Aboriginal Women	355
(b) Overview of Equalization of Net Family Property Under the FLA	
(i) <u>Calculation of the Equalization Payment</u>	
Goodman, “Matrimonial Property”, <i>Family Law</i> Bar Admission Course Materials	357
Note: Valuation Date.....	367
<i>Skrlj v. Skrlj</i>	370
<i>Folga v. Folga</i>	373
<i>Black v. Black</i>	375
Fredricks, “The Ownership Conundrum”	378
Wolfson and Corbin, “Problems of Title and and Constructive Trusts”	380
Note: Proposed Amendments to the FLA.....	381
(ii) <u>Implementation of the Equalization Payment</u>	
<i>Humphreys v. Humphreys</i>	383
Goodman, “Matrimonial Property”, <i>Family Law</i> Bar Admission Course Materials	388
(c) Selected Problems in Determining NFP	
(i) <u>Valuation and Costs of Disposition</u>	
Goodman, “Matrimonial Property”, <i>Family Law</i> Bar Admission Course Materials	392
(ii) <u>Future Interests</u>	
<i>Brinkos v. Brinkos</i>	396
(iii) <u>Educational Degrees, Professional Licenses and other forms of “Human Capital”</u>	
Weitzman, “The New Property” in <i>The Divorce Revolution</i>	401
<i>Caratun v. Caratun</i>	406

	Note: Compensatory Support	422
(iv)	<u>Continued Relevance of Constructive Trust</u>	
	<i>Kelly v. Kelly</i>	424
	<i>Rawluk v. Rawluk</i>	425
	Note: Reverse Constructive Trust	444
	Note: OLRC 1993 Recommendations	445
(d)	Departures from Equal Sharing	
(i)	<u>Depletion of Assets</u>	
	<i>Scott v. Scott</i>	447
	Notes.....	449
(ii)	<u>Unequal Contributions</u>	
	<i>LeBlanc v. LeBlanc</i>	451
	<i>Toronto Star</i> , “A New Day in a Hard Life”	455
	<i>Waters v. Waters</i>	457
	<i>Sullivan v. Sullivan</i>	460
	<i>Berdette v. Berdette</i>	462
	Note: <i>Peake v. Peake</i> and <i>McInnis v. McInnis</i>	467
	<i>Wakelin v. Wakelin (Lawyer’s Weekly)</i>	468
	Note: Tort Awards for Spousal Misconduct.....	469
(iii)	<u>Post-Separation Conduct and Anticipated Future Needs</u>	470
	Note: OLRC 1993 Recommendations.....	472

VI. THE MATRIMONIAL HOME

A. Introduction

Hovius, “The Matrimonial Home”	473
--------------------------------------	-----

B. The Matrimonial Home Under the Family Law Act, 1986

(a) Overview of Part II of the FLA

Wolfson and Corbin, “The Matrimonial Home Under the FLA”	474
--	-----

(b) Orders for Exclusive Possession

Bissett-Johnson and Holland, <i>Matrimonial Property Law in Canada</i>	481
<i>Pifer v. Pifer</i>	482
<i>Hill v. Hill</i>	483
Note: Restraining Orders	487

(c) Groups Precluded from Protection 488**VII. SPOUSAL SUPPORT****A. Historical Origins of Spousal Support**

Eekelaar and Maclean, <i>Maintenance After Divorce</i>	490
--	-----

B. Law Reform: Modern Spousal Support Law

Eekelaar and Maclean, "The Evolution of Private Law Maintenance Obligations"	491
LRCC, <i>Maintenance on Divorce</i>	493
Smart, <i>The Ties that Bind</i>	497
Davies, "The Changing Face of Spousal Support Law in Canada"	497
Rogerson, "Spousal Support After <i>Moge</i> "	502

**C. Spousal Support Under the *Divorce Act*, 1985 and
the *Family Law Act*, 1986****(a) The Rise of the Clean Break Principle and the Causal Connection Test**

<i>Messier v. Delage</i>	509
Note: The Supreme Court of Canada "Trilogy"	512
<i>Pelech v. Pelech</i>	513
<i>Richardson v. Richardson</i>	523

(b) The Law Shifts: *Moge v. Moge*

Rogerson, "Spousal Support after <i>Moge</i> "	531
<i>Moge v. Moge</i>	532

(c) **Spousal Support Post-*Moge***

Rogerson, “Spousal Support after *Moge*” 554

(i) Assessing the Economic Consequences of the Relationship: Quantifying Support; Lump Sum v. Periodic Awards

Elliot v. Elliot 555

Ross v. Ross 570

Waterman v. Waterman 573

Note: *MacNeil v. MacNeil* 582

Kennedy v. Kennedy 583

Leek v. Lightfoot 587

Morison v. Morison 589

(ii) Time-Limited Support

Bildy v. Bildy 594

Trewin v. Jones 598

(iii) The Continuing Role of Needs-Based Support

Note: *Andersen v. Carter* 601

Cuzzocrea v. Swain 602

Purcell v. Purcell 606

Kloos v. Kloos 611

(iv) The Continuing Relevance of Conduct

Anderson v. Anderson (Lawyer’s Weekly) 616

MacDonald v. MacDonald (Lawyer’s Weekly) 617

Melanson v. Melanson (Lawyer’s Weekly) 618

MacPhail v. MacPhail 619

VIII. DOMESTIC CONTRACTS

A. Introduction: Contracting in the Family Context

Balfour v. Balfour 622

Harper’s Magazine, “Conditional Love” 622

O’Donovan, “Reforming the Private” from *Sexual Divisions in Law* 623

Mnookin, “Divorce Bargaining: the Limits on Private Ordering” 626

Trebilcock and Keshvani, “The Role of Private Ordering in Family Law”	630
Bailey, “ <i>Pelch, Caron, and Richardson</i> ”	632
Note: The <i>Pelech</i> Trilogy	632

B. Limits on Contracting

(a) Setting Aside Contracts: General Principles of Contract Law

Hovius, <i>Family Law</i>	634
Note: Unconscionability	635
<i>Hyldtoft v. Hyldtoft</i>	635
<i>Puopolo v. Puopolo</i>	636
<i>Lindsay v. Lindsay</i>	638
<i>Crouse v. Crouse</i>	643
Note: <i>Heaton v. Heaton</i> ; <i>Currie v. Currie</i>	647
<i>Rosen v. Rosen</i>	648
<i>Slate v. Slate</i>	650
<i>Burgess v. Burgess</i>	652
Majury, “Unconscionability in an Equality Context”	661

(b) Statutory Powers to Set Aside and Vary (Support Variation)

Introductory Note	666
Cossman, “A Matter of Difference: Domestic Contracts and Gender Equality”	666
Note: <i>Fyffe</i> ; <i>Marshall</i> ; <i>Isaacson</i>	667
Bailey, “ <i>Pelech, Richardson and Caron</i> ”	669
Note: Variation Requests by Payors (<i>Leman</i> and <i>Ritchie</i>)	669
<i>Hood v. Hood</i>	670
<i>Masters v. Masters</i>	676
<i>L.G. v. G.B.</i>	680
<i>Santosuosso v. Santosuosso</i>	686